

(m)(1) Notwithstanding any other provision in this section, if a leverage transaction merchant is not offering to enter into, entering into or confirming the execution of, soliciting or accepting a leverage customer's order for, or accepting any leverage customer funds from a leverage customer to enter into or maintain any short leverage contract, the leverage transaction merchant may delete or disregard references to short leverage contracts in its Disclosure Document as follows:

(i) The third sentence of the first paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(ii) The words "and a short leverage transaction" in the fourth sentence of the first paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(iii) The words "and leverage contracts sold to a leverage transaction merchant are re-established at the then prevailing ask price" in the fifth sentence of the third paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(iv) The second sentence of the fifth paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(v) The words "or resold to" in the first sentence of the sixth paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(vi) The words "or resell," "and must also offer to resell any short leverage contract previously sold by a leverage customer," and "or short" in the second sentence of the sixth paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(vii) The words "or resold" and "or resale" (twice) in paragraph (a)(2)(vii) of this section;

(viii) All of the words following the first semicolon in paragraph (a)(2)(viii) of this section;

(ix) The words "and a representative single short leverage contract" in paragraph (a)(3) of this section; and

(x) The words "or short" in paragraphs (a)(5)(i) and (a)(5)(ii) of this section.

(2) Any leverage transaction merchant using a Disclosure Document that deletes or disregards references to short leverage contracts as permitted by paragraph (m)(1) of this section must file, in accordance with the provisions of paragraph (e)(2) of this section, a new Disclosure Document meeting all of the requirements of paragraphs (a) through (i) of this section at least 30 calendar days before it begins to offer any short leverage contract.

(Secs. 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982))

[49 FR 5532, Feb. 13, 1984; 49 FR 25427, June 21, 1984, as amended at 50 FR 29, Jan. 2, 1985; 50 FR 36415, Sept. 6, 1985; 54 FR 41080, Oct. 5, 1989; 54 FR 46503, Nov. 3, 1989]

§31.12 Segregation.

(a) Any person that accepts leverage customer funds from a leverage customer to enter into or maintain a leverage contract shall treat and deal with such leverage customer funds as belonging to that leverage customer. Such leverage customer funds: (1) Shall be separately accounted for and segregated as belonging to the leverage customer, (2) shall be kept in the United States, (3) shall not be commingled with the funds of any other person, and (4) shall not be used to secure or extend the credit of any leverage customer or person other than the one for whom the leverage customer funds are held: *Provided, however,* That the leverage customer funds treated as belonging to a leverage customer may for convenience be commingled with other leverage customer funds and deposited in the same account or accounts with a futures commission merchant or with a bank or trust company located in the United States under conditions set forth in paragraph (b) of this section. Any leverage customer funds when so deposited with a futures commission merchant, bank or trust company, shall be deposited under an account name which clearly indicates that the account contains leverage customer funds that are segregated as required by this section. Each person so depositing any leverage customer funds shall obtain and retain in its files for the period provided in §1.31 of this chapter an

acknowledgment from the futures commission merchant, bank or trust company wherein the leverage customer funds have been deposited that the futures commission merchant, bank or trust company has been informed that the leverage customer funds deposited with it are being treated by the depositing person as belonging to leverage customers and are being held in accordance with the provisions of this section. The futures commission merchant, bank or trust company shall allow inspection of such segregated accounts, including all documents pertaining thereto, at any reasonable time by any representative of the Commission or designated self-regulatory organization, if any. Notwithstanding the foregoing, a leverage transaction merchant may exclude from its segregation requirements commissions and other charges lawfully accruing in connection with leverage contracts provided such charges have actually been made to leverage customers' accounts and are shown on the customers' statements.

(b) No leverage customer funds deposited in accordance with paragraph (a) of this section shall be held, disposed of, used or treated as belonging to the depositing person or any person other than the leverage customers from whom the leverage customer funds were received: *Provided, however,* That leverage customer funds may be used to purchase obligations of the United States, general obligations of any state or of any political subdivision thereof, obligations fully guaranteed as to principal and interest by the United States, or unencumbered warehouse receipts for inventory held in approved contract market depositories or in commercial banks located in the United States which represent cover for leverage contracts purchased by such leverage customers, or may be deposited in a commodity account with a futures commission merchant to margin futures contracts or to purchase commodity options traded on or subject to the rules of a contract market which are permissible cover as described in §31.8(a) (2) and (3) for leverage contracts entered into by such leverage customers. Any use of leverage customer funds as described in this paragraph (b) shall be

made through an account or accounts used for the deposit of leverage customer funds, and proceeds from any sale, liquidation or other disposition of obligations or warehouse receipts obtained by such use shall be redeposited in these accounts. Each person that uses leverage customer funds to purchase obligations or warehouse receipts of the type described in this paragraph (b) shall separately account for and segregate the obligations or warehouse receipts as belonging to leverage customers. The obligations or warehouse receipts shall be deposited with a futures commission merchant, bank or trust company in the United States and shall be deposited under an account name which clearly indicates that it contains obligations or warehouse receipts treated as belonging to leverage customers, segregated as required by this section. Each person so depositing any obligations or warehouse receipts shall obtain and retain in its files for the period provided in §1.31 of this chapter an acknowledgment from the futures commission merchant, bank or trust company wherein the obligations or warehouse receipts have been deposited that the futures commission merchant, bank or trust company has been informed that the obligations or warehouse receipts are being treated by the depositing person as belonging to leverage customers and are being held in accordance with the provisions of this section. The futures commission merchant, bank or trust company shall allow inspection of such obligations or warehouse receipts at any reasonable time by any representative of the Commission or designated self-regulatory organization, if any. Each person that uses leverage customer funds to margin futures contracts or to purchase commodity options traded on or subject to the rules of a contract market which represent permissible cover for leverage contracts entered into by such leverage customers shall use a commodity account separate from any other commodity account containing futures contracts which do not represent cover. The leverage customer funds deposited in a commodity account with a futures

commission merchant to margin futures contracts or to purchase commodity options traded on or subject to the rules of a contract market which represent permissible cover for leverage contracts entered into by such leverage customers shall be deposited under an account name which clearly indicates that it contains obligations treated as belonging to leverage customers, segregated as required by this section. Each person so depositing any leverage customer funds shall obtain and retain in its files for the period provided in § 1.31 of this chapter an acknowledgment from the futures commission merchant wherein the leverage customer funds have been deposited that:

(1) The futures commission merchant has been informed that the commodity account is being treated by the depositing person as belonging to leverage customers and is being held in accordance with the provisions of this section,

(2) The customers on whose behalf the account is maintained by the leverage transaction merchant shall not be liable for any margin calls or other required deposits related to such account, and

(3) Upon liquidation of the open contracts in the account the futures commission merchant's claim in the account balance will be subordinate to that of leverage customers.

(c) Each person that uses leverage customer funds to purchase obligations or unencumbered warehouse receipts as permitted by paragraph (b) of this section shall keep a written record which includes the following:

(1) The date on which the purchase was made;

(2) The name of the person through which the purchase was made;

(3) The amount of funds so used;

(4) A description of such obligations or warehouse receipts, including the receipt number and the issuer's name;

(5) The identity of the futures commission merchant, bank or trust company wherein the obligations or warehouse receipts are segregated;

(6) The date on which the obligation, warehouse receipt, or portion thereof, is liquidated or otherwise disposed of;

(7) The amount of money, if any, received upon such liquidation or disposition; and

(8) The name of the person to or through which the obligation or warehouse receipt was disposed.

(d) Persons that use leverage customer funds to purchase obligations or unencumbered warehouse receipts described in paragraph (b) of this section shall include such obligations or unencumbered warehouse receipts in segregated accounts at values which do not exceed the lesser of current market value or a value calculated on the basis of a commercial or retail cash price series used to compute the market value of the physical commodities subject to leverage contracts in accordance with § 31.9(a)(1).

(e) The provisions of paragraphs (a) and (b) of this section shall not operate to prevent any person that uses leverage customer funds to purchase government obligations as described therein from receiving and retaining as its own any increment or interest resulting from such government obligations: *Provided, however*, That the leverage transaction merchant fulfills its obligation to pay carrying charges on a short leverage contract, including any margin deposit made in connection with such a contract, in accordance with § 31.25(b).

(f) The amount of leverage customer funds which are and which must be in a segregated account in order to comply with the requirements of this section shall be computed as of the close of each business day by each person required to segregate such leverage customer funds. A written record of this computation shall be made and kept, together with all supporting data, in accordance with the provisions of § 1.31 of this chapter. This daily computation shall be made by noon on the next business day and shall be identical in format to the Schedule of Segregation Requirements and Funds in Segregation contained in Form 2-FR.

(g) Each leverage transaction merchant shall maintain, as provided in § 1.31, a record of all securities and property received from leverage customers in lieu of money to purchase, guarantee or secure the entry into a leverage contract. Such record shall

show separately for each leverage customer a description of the securities or property received; the name and address of such leverage customer; the dates when the securities or property were received; the identity of the depositories or other places where such securities or property are segregated; the dates of deposits and withdrawals from such depositories; and the date of return of such securities or property to such leverage customer, or other disposition thereof, together with the facts and circumstances of such other disposition.

(h) The requirements of paragraphs (a) through (g) of this section shall not be applicable if the leverage transaction merchant is a member of a designated self-regulatory organization and conforms to minimum segregation standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations or resolutions approved by the Commission pursuant to section 19 of the Act and §31.28 of this part.

(Secs. 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982))

[49 FR 5535, Feb. 13, 1984, as amended at 50 FR 31, Jan. 2, 1985; 50 FR 34616, Sept. 6, 1985; 50 FR 40964, Oct. 8, 1985; 54 FR 41081, Oct. 5, 1989; 54 FR 46503, Nov. 3, 1989]

§31.13 Financial reports of leverage transaction merchants.

(a) Each leverage transaction merchant who files an application for registration with the National Futures Association under §3.17 of this chapter shall submit concurrently with the filing of such application either:

(1) A Form 2-FR certified by an independent public accountant as of a date not more than 45 days prior to the date on which such report is filed; or

(2) A Form 2-FR as of a date not more than 45 days prior to the date on which such report is filed and an Form 2-FR certified by an independent public accountant as of a date not more than 1 year prior to the date on which such report is filed. Each such person must include with such financial report a statement describing the source of his current assets and representing that his capital has been contributed for the

purpose of operating his business and will continue to be used for such purpose.

(b)(1) Each leverage transaction merchant must file, in accordance with the requirements of paragraph (e) of this section, a Form 2-FR for each fiscal quarter of each fiscal year. The Form 2-FR filed as of the close of the leverage transaction merchant's fiscal year must be certified by an independent public accountant. Each Form 2-FR must be filed no later than 45 days after the date for which the report is made: *Provided, however,* That any Form 2-FR which must be certified by an independent public accountant must be filed no later than 90 days after the close of the leverage transaction merchant's fiscal year.

(2) The provisions of paragraph (b)(1) of this section may be met by any person registered as a leverage transaction merchant who is a member of a designated self-regulatory organization and conforms to minimum financial standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations, or resolutions and approved after April 13, 1984, by the Commission pursuant to section 19 of the Act and §31.28 of this part: *Provided, however,* That each such registrant shall promptly file with the Commission a true and exact copy of each financial report which it files with such designated self-regulatory organization.

(c) Each Form 2-FR which must be certified by an independent public accountant in accordance with the provisions of paragraphs (a)(1), (a)(2) and (b)(1) of this section, must be certified in accordance with §1.16 of this chapter, and must be accompanied by the accountant's report on material inadequacies in accordance with the provisions of §1.16(c)(5) of this chapter. In all other respects, the independent public accountant shall act in accordance with the provisions of §1.16 (except paragraph (f)) of this chapter: *Provided, however,* That the term "Form 2-FR" shall be substituted for "Form 1-FR" in §1.16(c)(5) of this chapter, the term "§31.9" shall be substituted for the term "§1.17," the term "leverage transaction merchant" shall be substituted